IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-987913 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: WALTER KOKINS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1690

WALTER KOKINS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 30 March 1967, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's documents for five months upon finding him guilty of misconduct. The specifications found proved allege that while serving as an AB seaman on board the United States SS SANTA EMILIA under authority of the document above described,Appellant:

(1) On 1 January 1967 wrongfully failed to join the vessel at Subic Bay, P.I.;

(2) from 10 through 15 January 1967, at Sattahip, Thailand, wrongfully failed to perform his duties; and

(3) from 16 through 18 January 1967, wrongfully failed to perform duties aboard the vessel by reason of intoxication.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigation Officer introduced in evidence voyage records of SANTA EMILIA.

In defense, Appellant offered in evidence the testimony of a witness who missed the ship at the same time as he at Subic Bay, and a certificate of discharge.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved as stated above. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of five months.

The entire decision was served on 3 April 1967. Appeal was timely filed on 11 April 1967 and perfected several months later.

## FINDINGS OF FACT

On all dates in question, Appellant was serving as an able bodied seaman on board the United States SS SANTA EMILIA and acting under authority of his document. Since the appeal goes only to matters of law and not of fact, no further findings of fact are required except to note that the allegations of the specifications are found proved insofar as all matters except jurisdiction are concerned.

## BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

(1) Appellant's failure to join at Subic Bay was condoned by the master's acceptance of him back aboard at a later date, and

(2) the misconduct committed after Appellant was accepted back on board is not actionable because he had not properly been signed on in accordance with law.

APPEARANCE: Hersh and Hadfield, of San Francisco, California, by James D. Hadfield, Esquire

## OPINION

### I

One marked inconsistency appears in the defense efforts in this case. It is asserted on the one hand that the offenses alleged to have occurred after Appellant rejoined the ship at Sattahip, Thailand, are not cognizable under R.S. 4450, because Appellant was not signed on the vessel in accordance with laws governing shipment of seamen in a foreign port, and Appellant was not a member of the crew when he rejoined because he had been discharged when he failed to join at Subic Bay, P.I. On the other hand, Appellant contended that his failure to join at Subic Bay had been condoned when the master accepted him back aboard as a member of the crew at Sattahip.

Both of these theories cannot be accepted seriously at the

same time. One must be rejected. It is possible that both can be rejected.

II

I do not see how any master may "condone" a wrongful failure to join. He may exercise discretion in not imposing a penalty. It is the Congress of the United States that has made a seaman's failure to join an offense. Reception back aboard may have some bearing upon the contractual relationship of the parties, as indeed it seems to have done here, but this does not serve to protect the seaman from an action by the United States to suspend or revoke his document under R.S. 4450.

III

To prove Appellant's "discharge" at Subic Bay, P.I., there was placed in evidence a certificate of discharge, #5708783. The discharge was prepared and dated as of 31 December 1966. It shows a date of first employment of 1 December 1966 and a date of discharge of 31 December 1966 at Subic Bay. However, the date of certification by the shipping commissioner was altered to read 23 February 1967. Appellant's counsel, who represented him at hearing, stated that the discharge form was signed in his presence by the shipping commissioner and the seamen. (R-33). This discharge was Defense Exhibit "A".

There was also introduced into evidence by the Investigating Officer as "Exhibit 1" an extract from the Shipping Articles. This document shows a "signing on" on 1 December 1966 and a "Place, Date and Cause of Leaving Ship" as "San Francisco, California, 23 February 1967, End of Voyage." The record shows that the articles themselves were before the Examiner. While the substituted exhibit does not reflect any signature of the Seaman-Appellant, the record shows that the original of the articles indicated a "Sign-off" under protest." (R-6). Counsel also stated that the "under protest" provision was entered "on advice of counsel."

Since the date of conclusion of the articles and the date of issuance of the certificate of discharge are the same, I assume that the counsel was the same in all instances.

I do not know how the issuance of Appellant's Exhibit "A" was procured. The record does not show whether Appellant received another certificate of discharge covering other dates of voyage. The record does not show whether Appellant accepted wages for the period from his return to the vessel at Sattahip to the end of the voyage. The record also does not show what Appellant was protesting when h e signed off "under protest" on advice of counsel at the end

of the voyage.

But certain assumptions may be made. No power in the United States could compel Appellant to "sign off" the article at the end of the voyage. Of course, if he chose not to "sign off," his wages would not be paid if there were wages due him. Since, upon advice of counsel, he did sign off under protest, it must have been that there were wages due and that he accepted them, protesting only the penalties imposed.

Here again it appears that Appellant is inconsistent. The "discharge" procured in presence of counsel on 23 February 1967 is tainted, even if certified to by a Coast Guard official who may have been deceived or misled. The "discharge," even if prepared on 31 December 1966, had not issued as a viable document when Appellant reentered the service of the vessel at Sattahip on 7 January 1967.

IV

Whether or not all the laws relative to the employment of seamen in foreign ports were complied with is considered irrelevant for two reasons. The first is that, without any release from the articles having been formalized, Appellant, having committed one act of misconduct, was received back on the payroll under the terms of the original shipping agreement. His obligation to the vessel and his agreement was continuous. The second is that, assuming arguendo that a new relationship had to be established between master and seaman upon the seaman's rejoining, laws designed to protect a seaman from generally outmoded practices of masters to ill-treat seamen cannot be invoked to cloak a seaman's conduct on board with immunity.

Appellant correctly cites 46 U.S.C. 578 as declaring unlawful shipments of seamen void. But the section also provides the seaman with his remedy. He may "leave the service at any time." The record here shows conclusively that Appellant did not seek his remedy, assuming that it was available to him, which is not admitted.

R.S. 4450 and its satelite statutes provide for action to suspend or revoke a document when a seaman is serving under authority of the document. There can be no doubt that the service of Appellant aboard SANTA EMILIA was at all times under authority of the document he held. No ingenious manipulation of records cam alter this fact, unless Appellant would attempt a "confession and avoidance" (which he has not) by declaring that he is not amenable to action under R.S. 4450 because he had criminally violated laws

of the United States.

## CONCLUSION

Jurisdiction was established in this case. Since this was the only issue raised on appeal, there is no reason to disturb the Examiner's findings or order.

## ORDER

The order of the Examiner dated at San Francisco, California, on 30 March 1967, is AFFIRMED.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this 27th day of March 1968.

Appeals

contradictory bases.

Failure to join

cannot be condoned by master.

Jurisdiction under R.S. 4450

not dependent on compliance with all statutes.

Service of seamen

de facto, jurisdiction under R.S. 4450.

Shipment of seamen

unlawful, or bar to jurisdiction under R.S. 4450.